



# **COMMONWEALTH of VIRGINIA**

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

PIEDMONT REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Michael P. Murphy  
Regional Director

### **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO HERCULES INCORPORATED D/B/A ASHLAND SPECIALTY INGREDIENTS Registration Number 50363**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Hercules Incorporated d/b/a Ashland Specialty Ingredients for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable Permit and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1301.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means Hercules Incorporated d/b/a Ashland Specialty Ingredients, a manufacturer of chemicals, located at 1111 Hercules Road, Hopewell, Virginia.
6. "Hercules" means Hercules Incorporated, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Hercules is a "person" within the meaning of Va. Code § 10.1-1300
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "Permit" means a New Source Review (NSR) Permit to construct and operate, Registration No. 50363, to manufacture chemicals and several products, including a cellulose fiber product known as Natrosol. The Permit was issued under the Virginia Air Pollution Control Law and the Regulations to Hercules Incorporated, a subsidiary of Ashland, Inc. d/b/a Ashland Specialty Ingredients, on January 28, 2011.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Hercules owns and operates the Facility in Hopewell, Virginia. The Facility manufactures chemicals and produces several products, including Natrosol, a cellulose fiber product. The Facility is the subject of the Permit which allows the emission of Volatile Organic Compounds (VOCs) which occurs during the production of Natrosol. The Facility is a major source for VOC emissions and is located in the Richmond VOC control area, however, the air quality in Hopewell is currently considered to be in attainment for all criteria pollutants.

2. Hercules d/b/a Ashland Specialty Ingredients submitted correspondence to DEQ by letters dated August 24, 2015 and September 24, 2015, showing the following VOC emissions in excess of Permit Condition No. 7: June 2015 – 75.7 tons/yr., July 2015 – 86.3 tons/yr. and August 2015 – 86.3 tons/yr.
3. Condition No. 7 of the Permit states that, “Emissions from the operation of the Natrosol process area shall not exceed the limits specified below, calculated monthly as the sum of each consecutive 12 month period:

Volatile Organic Compounds (9 VAC 5-50-260)”	66.6 tons/yr
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4. On October 8, 2015, the Department issued Notice of Violation No. APRO000275-001, for the violations as described above.
5. On October 22, 2015, Department staff met with Hercules representatives to discuss the violations, including the corrective actions the company had taken.
6. By letter dated February 26, 2016, Hercules d/b/a Ashland Specialty Ingredients reported the following VOC emissions in excess of Permit Condition No. 7: September 2015 – 78.7 tons/yr.
7. Based on the information Hercules d/b/a Ashland Specialty Ingredients provided in the August 24, 2015, September 24, 2015, and February 26, 2016 letters reporting VOC emission exceedances, records review, and the October 22, 2015 meeting with representatives of the Facility, the Board concludes that Hercules violated Condition No. 7 of the Permit, as described above.
8. Hercules completed the corrective actions by the end of the October 2015 Natrosol process shutdown, having repaired all the identified leaks. Hercules has made the corrective actions that demonstrate the violations as described above, have been addressed.
9. In order for Hercules to ensure continued compliance with VOC emissions in the Natrosol area, DEQ staff and representatives of Hercules have agreed to the Schedule of Compliance, which is incorporated as Appendices A and B of this Order.

#### **SECTION D: Agreement and Order**

By virtue of the authority granted it in Va. Code §10.1-1309 and -1316, the Board orders Hercules, and Hercules agrees:

1. To perform the actions described in Appendices A and B of this Order; and

2. To a civil charge of \$20,422 in settlement of the violations cited in this Order to be paid as follows:
  - a. Hercules shall pay \$5,106 of the civil charge within 30 days of the effective date of this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Hercules shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Hercules shall be liable for attorneys' fees of 30% of the amount outstanding.

- b. Hercules shall satisfy \$ **15,316** of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.
- c. The net project costs of the SEP to Hercules shall not be less than the amount set forth in Paragraph D.2.b. If it is, Hercules shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the part will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The cost of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
- d. By signing this Order Hercules certifies that it has not commenced performance of the SEP.
- e. Hercules acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Hercules to a third party, shall not relieve Hercules of its responsibility to complete the SEP as described in this Order.
- f. In the event it publicizes the SEP or the SEP results, Hercules shall state in a prominent manner that the project is part of a settlement of an enforcement action.

- g. The Department has the sole discretion to:
  - i. Authorize any alternate, equivalent SEP proposed by the Facility; and
  - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
- h. Should the Department determine that Hercules has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Hercules in writing. Within 30 days of being notified, Hercules shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2, above

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Hercules, for good cause shown by Hercules, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.* after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Hercules admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact, and conclusions of law in this Order.
4. Hercules consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Hercules declares it has received fair and due process under the Administrative Process Act and Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend or enforce this Order.
6. Failure by Hercules to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing

herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Hercules shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Hercules shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hercules shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Hercules. Nevertheless, Hercules agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Hercules has completed all of the requirements of the Order; or

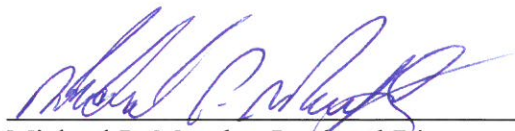


- b. Hercules petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Hercules.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hercules from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Hercules and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Hercules certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Hercules to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Hercules.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Hercules Incorporated voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20<sup>th</sup> day of July, 2016.

  
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Michael P. Murphy, Regional Director  
Department of Environmental Quality

Hercules Incorporated, voluntarily agrees to the issuance of this Order.

Date: July 18, 2016 By: Pl W K, Plant Manager  
(Person) (Title)  
Hercules Incorporated

State of Virginia

City/County of Hopewell

The foregoing document was signed and acknowledged before me this 18<sup>th</sup> day of  
July, 2016, by Paul W. Tuck, who is  
(name)  
Plant Manager of Hercules Incorporated, on behalf of the company.

Susanne E. Nagar  
Notary Public  
203825  
Registration No.

My commission expires: 10-31-2017

Notary seal:

RECEIVED PRO  
JUL 19 2016



## APPENDIX A

Hercules shall ensure leaks contributing to VOC emissions are minimized in the Natrosol process and all VOC storage tanks located at the Facility, by implementing the following enhanced monitoring plan:

### 1. Monitoring

- a. Conduct LDAR (additional leak detection and repair) monitoring in the Natrosol area using methodologies as found in NSPS 40 CFR 60 Subpart VVa.
- b. Conduct Optical Gas Imaging (OGI) of the Natrosol area on a quarterly basis. All leaks observed must be quantified using LDAR monitoring as described in item 1.a above.
- c. Conduct the monitoring described above in 1.a and 1.b for a period of one year from the issuance of this Order. Compliance periods will run from July 2016 – September 2016, October 2016 – December 2016, January 2017 – March 2017, and April 2017 – June 2017.
- d. Monitor all LDAR components on storage tanks that contain VOCs not currently subject to a LDAR program by no later than June 1, 2017. LDAR methods referenced in Condition 1.a above will be utilized.

### 2. Reports

Submit to DEQ results of the quarterly monitoring described in 1.a and 1.b above, by no later than 45 days after the end of the quarter.

Submit to DEQ results of the monitoring described in 1.d above within 45 days of completion of monitoring, but by no later than July 15, 2017.

### 3. Contact

Unless other specified in this Order, Hercules shall submit all requirements of Appendix A of this Order to:

Cynthia Akers  
Enforcement Specialist  
VA DEQ-PRO  
4949-A Cox Road  
Glen Allen, VA 23060  
[Cynthia.Akers@deq.virginia.gov](mailto:Cynthia.Akers@deq.virginia.gov)

## APPENDIX B

In accordance with Va. Code § 10.1-1186.2, Hercules shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix.

1. The SEP to be performed by Hercules is the purchase of new turnout firefighting gear for the Hopewell Fire Department.
2. The SEP shall be completed by November 15, 2016.
3. Hercules shall submit progress reports on the SEP on a monthly basis, due the 10<sup>th</sup> day of each month.
4. Hercules shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. Hercules shall submit the final report and certification to the Department within 30 days from completion of the SEP.
5. If the SEP has not or cannot be completed as described in the Order, Hercules shall notify DEQ in writing no later than 30 days after discovery. Such notification shall include:
  - a. an alternate SEP proposal, or
  - b. payment of the amount specified in the second Paragraph of section D as described in Paragraph D.2.
6. Hercules hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
7. Hercules shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 30 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from Hercules's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.
8. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Cynthia Akers  
Department of Environmental Quality  
Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060